

§ 563.42 Additional standards applicable to transactions with affiliates and subsidiaries.

(a) *General.* A savings association and its subsidiaries may engage in a transaction with an affiliate only if the transaction is permissible under section 23B of the Federal Reserve Act, 12 U.S.C. 371c–1, and the additional restrictions set forth in this section, as follows:

(1) *Standards.* A savings association and its subsidiaries may engage in any of the transactions described in paragraph (a)(2) of this section only:

(i) On terms and under circumstances, including credit standards, that are substantially the same, or at least as favorable to the association or its subsidiary, as those prevailing at the time for comparable transactions with or involving non-affiliated companies; or

(ii) In the absence of comparable transactions, on terms and under circumstances, including credit standards, that in good faith would be offered to, or would apply to, non-affiliated companies;

(2) *Transactions covered.* Paragraph (a)(1) of this section applies to the following:

(i) Any covered transaction with an affiliate;

(ii) The sale of securities or other assets to an affiliate, including assets subject to an agreement to repurchase;

(iii) The payment of money or the furnishing of services to an affiliate under contract, lease, or otherwise;

(iv) Any transaction in which an affiliate acts as an agent or broker or receives a fee for its services to the savings association or to any other person;

(v) Any transaction or series of transactions with a third party:

(A) If an affiliate has a financial interest in the third party; or

(B) If an affiliate is a participant in the transaction or series of transactions;

(3) *Transactions that benefit an affiliate.* For the purpose of this section, any transaction by a savings association or its subsidiaries with any person shall be deemed to be a transaction with an affiliate if any of the proceeds of the transaction are used for the benefit of, or transferred to, that affiliate.

(b) *Prohibited transactions*—(1) *General.* A savings association and its subsidiaries:

(i) Shall not purchase as fiduciary any securities or other assets from any affiliate unless the purchase is permitted;

(A) Under the instrument creating the fiduciary relationship;

(B) By court order; or

(C) By law of the jurisdiction governing the fiduciary relationship; and

(ii) Whether acting as principal or fiduciary, shall not knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security if a principal underwriter of that security is an affiliate of the association.

(2) *Exception.* Paragraph (b)(1)(ii) of this section shall not apply if the purchase or acquisition of securities has been approved, before the securities are initially offered for sale to the public, by a majority of the directors of the savings association who are not officers or employees of the association or any affiliate thereof.

(c) *Advertising restriction.* A savings association and its subsidiaries and any affiliate of a savings association shall not publish any advertisement or enter into any agreement stating or suggesting that the association shall in any way be responsible for the obligations of its affiliates.

(d) *Definitions.* For the purpose of this section:

(1) The terms *affiliate*, *bank*, *covered transaction*, *savings association* and *subsidiary* have the meaning given to each term in § 563.41 of this part, (but the term *affiliate* does not include any company described in paragraph (b)(2) of § 563.41 of this part, any bank, or any savings association).

(2) The term *security* has the meaning given to that term in section 3(a)(10) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(10); and

(3) The term *principal underwriter* means any underwriter who, in connection with a primary distribution of securities:

(i) Is in privity of contract with the issuer or an affiliated person of the issuer;

(ii) Acting alone or in concert with one or more other persons, initiates or

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directs the formation of an underwriting syndicate; or

(iii) Is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution.

(e) *Recordkeeping requirements.* With respect to all transactions subject to this section between a savings association and its subsidiaries and the association's affiliates or between a savings association and an unaffiliated party to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, an affiliate, the association shall make and retain records, that reflect those transactions in reasonable detail. The association's records shall, at a minimum, include the information required by § 563.41(e)(1)(v) of this part.

[56 FR 34013, July 25, 1991, as amended at 60 FR 66869, Dec. 27, 1995]

EFFECTIVE DATE NOTE: At 67 FR 77918, Dec. 20, 2002, § 563.42 was removed, effective Apr. 1, 2003.

§ 563.43 Loans by savings associations to their executive officers, directors and principal shareholders.

Pursuant to 12 U.S.C. 1463(a) and 1468, a savings association, its subsidiaries and its insiders (as defined) shall be subject to the restrictions contained in 12 CFR Part 215, subparts A and B of the Federal Reserve Board's Regulation O, with the exception of 12 CFR 215.13, in the same manner and to the same extent as if the association were a bank and a member bank of the Federal Reserve System, except that:

(a) Such provisions shall be administered and enforced by the OTS;

(b) References to the term "bank holding company" shall be deemed to refer to "savings and loan holding company";

(c) References to "report of condition filed under 12 U.S.C. 1817(a)(3)" shall be deemed to refer to "Thrift Financial Report";

(d) The term *subsidiary* shall include a savings association that is "controlled," within the meaning of § 563.41(a)(3) of this part, by a company (including for this purpose an insured depository institution) that is a savings and loan holding company. When

used to refer to a subsidiary of a savings association, the term *subsidiary* shall mean a "subsidiary" as that term is defined at § 563.41(b)(4) of this part; and

(e) References to the Reserve Bank or the Comptroller shall be deemed to include the Director of the Office of Thrift Supervision.

(f) References to the term "unimpaired capital and unimpaired surplus" shall be deemed to refer to "unimpaired capital and unimpaired surplus" as defined at § 563.93(b)(11) of this part.

[57 FR 45980, Oct. 6, 1992, as amended at 59 FR 53571, Oct. 25, 1994; 60 FR 66869, Dec. 27, 1995]

EFFECTIVE DATE NOTE: At 67 FR 77918, Dec. 20, 2002, § 563.43 was amended by revising paragraph (d), effective Apr. 1, 2003. For the convenience of the user, the revised text is set forth as follows:

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(d) The term subsidiary includes a savings association that is controlled within the meaning of § 563.41(b)(6) of this part by a company (including for this purpose an insured depository institution) that is a savings and loan holding company. When used to refer to a subsidiary of a savings association, the term subsidiary means a "subsidiary" as that term is defined at § 563.41(b)(13) of this part.

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§ 563.47 Pension plans.

(a) *General.* No savings association or service corporation thereof shall sponsor an employee pension plan which, because of unreasonable costs or any other reason, could lead to material financial loss or damage to the sponsor. For purposes of this section, an employee pension plan is defined in section 3(2) of the Employee Retirement Income Security Act of 1974, as amended. The prospective obligation or liability of a plan sponsor to each plan participant shall be stated in or determinable from the plan, and, for a defined benefit plan, shall also be based upon an actuarial estimate of future experience under the plan.